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PENALISATION OF ABORTION IN CANON AND SECULAR LAW

Abstract: The focus of this article is an analysis of legal regulations of abortion in Polish law and in canon law. The main goal of the article is to present the reason behind the legislator's decision to penalise abortion. The article also shows the differences between penalisation of the crime in both law orders. In order to achieve the goal, it was necessary to analyse the regulation in both legal orders according to the applicable legal acts. The key documents are: the Act on Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion (1993.01.07), the Penal Code (1997.06.06) in the Polish law order and the Code of Canon Law in the canon law order.

Key words: conceived child, abortion, Polish law, canon law, life, health.

A nation that kills its own children has no future [...].
The right to life is not a question of ideology,
not only a religious right; it is a human right.
John Paul II, Kalisz 1997

Human life is one of the most essential goods in the hierarchy of goods protected by law. It is the greatest gift a human being can receive from

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God, and there is no doubt that it is a process that lasts from the moment of conception until death (Zoll, 2013, 24).

The issue of abortion has been known since the time before the common era. The reasons for abortion vary (Chazan, Simon, 2009, 53–63). The Church has always voiced its uncompromising opposition to killing, considering foetus removal to be a highly immoral act (Wejbert-Wąsiewicz, 2012, 41). The Church's position on this has remained unchanged over the centuries. A human being that functions in a specific reality is subject to the influence of two legal orders that regulate abortion differently. The teachings of the Catholic Church state that termination of pregnancy is any act intended to kill an unborn life.

The Polish state's legal order respects the value of life of the unborn, but introduces certain exceptions. According to the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993*, the legislator allows abortion in two situations. Firstly, when the pregnancy is the result of a prohibited act, secondly, when the pregnancy endangers the life or health of the mother (Dz.U. 1993 r. Nr 17, poz. 78). The Church, however, does not consider or recognise the premises allowed by the state legislature.

In view of the different regulations of the two legal systems, I will analyse below the norms on abortion contained in them.

Definition of abortion

When defining abortion based on the teachings of the Catholic Church, it should be noted that neither the 1917 Code of Canon Law nor the current Code of Canon Law, promulgated in 1983, provide such a definition. On the one hand, the doctrinal discussions presented the opinions of those authors who considered that the moment when the offence of abortion is committed is the moment of termination of pregnancy, resulting in the removal of the foetus, and on the other hand, those who defined abortion unequivocally as the removal of a foetus incapable of independent life from the mother's womb (Wernz, Vidal, 1951, 546). The matter was settled by the Pontifical Commission for the Interpretation of the *Code of Canon Law*, which stated that the concept of abortion is not only the removal from the mother's womb of a foetus incapable of independent life, but also the killing of the foetus carried out at any time from the moment of conception and in any way, which means that neither the method nor the manner of the abortion

is relevant. 'The way the procedure is performed is irrelevant, what matters is the criminal intent (Sztafrowski, 1986, 365). What is relevant, however, is the consequence, i.e. the termination of pregnancy that is the death of the human foetus. The Commission addressed another important aspect of the definition of abortion, which is the timing of the abortion, stating that abortion is the killing of a foetus carried out at any time after its conception.

With this in mind, it is worth noting that the murder of a child capable of independent life committed outside the womb is not an abortion. It is also not an abortion to remove a dead foetus whose death, due to natural causes or as a result of an unintentional act, occurred in the mother's womb (Leszczyński, 2001, 58–59).

In the medical literature, abortion (interruption) is a specific type of miscarriage, [...] is the termination of pregnancy before the sixteenth week, resulting in the expulsion from the uterine cavity of the fertilized egg or its fragments (Skrzypczak, Pisarski, 1996, 196–204).

In turn, W. Fijałkowski points out that the term abortion is used to describe an intentional action which entails [...] the killing of a child during its intrauterine development, not at risk from a disease process that could cause a miscarriage (Fijałkowski, 1999, 148).

Given the above definitions, we can conclude that abortion is a medical procedure or a non-medical action resulting in the interruption of human life during pregnancy.

Development of regulations on the criminal law protection of the conceived child in Poland

In the Polish *Penal Code* of 11 July 1932 (*Regulation of the President*, 1932) the legislator included offences of attempt against life of the conceived life. According to Article 231 of the 1932 Penal Code, a woman who removes a foetus or allows it to be removed by another human being was punishable by up to three years' imprisonment. The removal of the foetus with the woman's consent by a third party or assisting her in this act was punishable by imprisonment of up to five years (Article 232 of the 1932 Penal Code), whereas when the removal was carried out without the woman's consent, the act was qualified as a crime punishable by up to ten years in prison (Article 234 of the 1932 Penal Code). A similar punishment was imposed on the perpetrator who caused the death of a pregnant woman as a result of their actions (Article 230 § 2 of the 1932 Penal Code).

The code also provided for exceptions to the prohibition of abortion. According to the wording of Articles 231 and 232 of the 1932 Penal Code, the perpetrator was not criminally liable for the stated acts if the procedure was necessary due to the state of health of the pregnant woman or the pregnancy was the result of a criminal offence – fornication with a minor or handicapped person, rape, abuse of a relationship of dependence or exploitation of a critical position, incest. An additional condition for non-punishment was that the procedure had to be performed by a doctor (Zielińska, 1990, 49). It is worth mentioning that the perpetrator's conduct in the form of an intentional attempt on the life of a child conceived in a state of superior necessity was also considered unpunishable (Article 22 of the 1932 Penal Code; Wiak, 2002, 66).

The primary good protected under the 1932 Penal Code was the life of the child. The rules in force at the time also protected the mother's health (Bogunia, 1980, 20–21).

The general and automatic exemption of a woman's liability for the killing of a conceived child was introduced in Poland by the *Act of 27 April 1956 on the Conditions of Legalising the Termination of Pregnancy*. The exemption came with the enabling of abortion on social grounds and the removal of legal and criminal guarantees for the protection of human life. The Act also contained criminal provisions, introducing penalisation in the following cases:

– forcing in any way a woman to undergo a termination of pregnancy – punishable by up to five years' imprisonment (Article 3);
– performing an abortion with the consent of the pregnant woman, but contrary to the provisions of the Act – punishable by up to three years' imprisonment (Article 4);
– assisting a pregnant woman to carry out a termination of pregnancy in violation of the Act – punishable by up to three years' imprisonment (Article 5).

The criminal provisions of the 1956 Act deprived the conceived child of the protection by law (Wolińska, 1962, 113–114). The good that was protected under this Act (Articles 3–5) was no longer the life of the child, but the health of the mother. The consequence of this assumption was that an abortion that was carried out by the woman herself was merely a self-harm, thus, in accordance with the principle of *volenti non fit iniuria*, it should not be penalised (Bogunia, 1980, 20–21).

The provisions of the Penal Code of 19 April 1969 echoed in this respect the 1956 regulation, which for the first time introduced unpunishability of the mother of a conceived child (Zoll, 2017, 326).

Current legal situation in Poland – the family planning, human embryo protection and conditions of permissibility of abortion act of 7 January 1993

With the entry into force of the 1993 Act, Article 149a was introduced into the Penal Code, which in paragraph 1 defined the offence of causing the death of a conceived child, punishable by imprisonment of up to two years. Paragraph 2 of this article explicitly specified that the mother of the conceived child was not liable to punishment, while paragraph 3 stipulated a catalogue of circumstances excluding punishment for the murder of the conceived child.

It should be noted that Article 149b of the Penal Code specified the qualified type of abortion:

Whoever, by use of violence against a pregnant woman causes the death of the conceived child or causes the conceived child's death in another way without the woman's consent or by use of violence, by an unlawful threat or deceit, leads the mother of the conceived child to take the child's life, shall be subject to imprisonment for a period of 6 months up to 8 years.

Whereas Article 156a § 1 of the Penal Code penalised the act of causing bodily harm to a conceived child (Kubiak, 2017, 539):

Whoever causes bodily injury to a conceived child or any disturbance of health that endangers its life shall be shall be punished by imprisonment for a period of up to 2 years.

The new parliament, elected in 1993, attempted to amend the law by introducing a broad basis for the legal killing of a conceived child due to social reasons. The first attempt was blocked by President Lech Walesa, and the Sejm failed to gather enough votes to override the veto. Another attempt was made after the 1995 presidential election (Aleksander Kwasniewski became president), leading to the enactment of the *Act of 30 August 1996 amending the Family Planning, Human Embryo Protection and the Conditions of Permissibility of Abortion Act*, as well as amending certain other acts (Journal of Laws No. 139, item 646). The provision of Article 1 of the Act of 7 January 1993 was deleted, and in its place a norm reaffirming the principle of the protection of the right to life, including in the prenatal phase, but only within the limits that have been defined by law, was introduced. By doing so, the legislator withdrew from recognising the right to life as an inherent right of every human being, and the extent of the protection to which it was entitled was made dependent on the provisions contained in the ordinary

law. The term *conceived child* and all provisions that directly protected the life and health of a human being before birth were deleted from the Penal Code. Also, two new indications for termination of pregnancy appeared, i.e. 'difficult living conditions' and 'difficult personal situation' of the pregnant woman (Kubiak, 2017, 540).

On 11 December 1996, a request was submitted to the Constitutional Tribunal to examine the constitutionality of, among others, Article 1 of the *Act amending the Family Planning Act* with at that time applicable Article 1, Article 67(1) and (2), as well as Article 79(1) of the constitutional provisions left in force pursuant to Article 77 of *the Constitutional Act of 17 October 1992 on the Mutual Relations Between the Legislative and Executive Institutions of the Republic of Poland and on Local Self-government* (Journal of Laws, [17.03.2017]).

On 28 May 1997, in its judgment K 26/96 (Judgement, 1997), the Constitutional Tribunal ruled that Articles 1(2)(5) of the *Act amending the Family Planning Act* were incompatible with Article 1, as well as Article 79(1) of the constitutional provisions remaining in force on the basis of Article 77 of the 1992 Small Constitution, as they violated the constitutional guarantees for the protection of human life at every stage of development. In the reasons for the judgment, the Constitutional Tribunal stated:

The binding Polish constitutional regulations do not contain any provision that would directly address the protection of life. Nevertheless, it does not mean that human life is not a value protected under the Constitution. The fundamental provision from which the constitutional protection of human life should be inferred is Article 1 of the constitutional provisions that have been upheld and, in particular, the democratic rule of law. Such a state can only exist as a commonwealth of people and only people can be recognized as the actual carriers of rights and obligations laid down by the State concerned. Life is the fundamental attribute of a human being. When that life is taken away, a human being is at the same time annihilated as the holder of rights and obligations.

The judgment is pivotal as it recognises life as a constitutional value as well as the right to protect it. According to the Constitutional Tribunal, the constitutional value also refers to the prenatal phase, which hinders the differentiation of the value of life at different stages of its development. The attribution by the Constitutional Tribunal of an absolute character to the right to life stirred up great controversy. The opponents referred to the fact that the right to life was not absolute both under the legislation in force

at the time and under the provisions of ratified international agreements (Grabowski, 2006, 142–143).

The most important articles for the current Family Planning Act are Articles 4a, 4b and 4c, which were added by the *Act amending the Family Planning Act*. These articles define, among other things, the circumstances in which abortion is permissible and the manner in which this procedure may be carried out. Article 4a(1) sets out the circumstances under which a termination of pregnancy may take place, adding that it may only be performed by a doctor when:

– the pregnancy poses a risk to the life or health of the pregnant woman ('medical indication');
– there is a well-founded suspicion that the pregnancy has resulted from a criminal act ('criminal indication'"). The remainder of this article specifies in which circumstances and when the various points of paragraph 1 may apply (*The Family Planning*, 1993).

Protection of conceived life on the basis of the Polish Penal Code of 6 June 1997

The legislative changes that took place between 1993 and 2000 led to a rather complex legal system in terms of the protection of the conceived child. The general framework is set by the provisions of the Constitution of the Republic of Poland, Article 38 guaranteeing everyone the legal protection of life, and Article 68 guaranteeing everyone the right to the protection of health. The detailed scope of the legal protection of the conceived child should be reconstructed from the provisions of Articles 152–154 and Article 157a of the Penal Code, as well as the *Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993* in the wording given to it by the Act of 30 August 1996, and the Constitutional Tribunal's decision of 28 May 1997, as well as the provisions of the *Act of 5 December 1996 on Professions of Doctor and Dentist* defining the conditions for the admissibility of experiments involving a conceived child, as amended by the Act of 8 July 1999 (Wiak, 2002, 238–239).

The *Penal Code* of 1997 plays a special role among the mentioned acts. The provisions penalising 'termination of pregnancy' are placed in Chapter 19: *Crimes against life and health*. The provision of Article 152 § 1 of the Penal Code makes it an offence to commit the act of abortion with the consent of the pregnant woman, but in violation of the provisions

of the Act of 7 January 1993. It is punishable by imprisonment from one month to three years. A more severe punishment – from six months to eight years – is for the termination of pregnancy when the conceived child has reached the capacity to live independently outside the mother's organism (Article 152 § 3 of the Penal Code). It is also an offence to assist or induce a pregnant woman to terminate her pregnancy in violation of the Act. This act is punishable by imprisonment of up to three years (Article 152 § 2 of the Penal Code; Wąsek, Zawocki, 2010, 315).

In Article 153 of the Penal Code, the legislator criminalises the termination of pregnancy against the will of the pregnant woman. The conduct of the perpetrator of this offence may consist of aborting a pregnancy with violence against the pregnant woman or otherwise without her consent, e.g. by performing another medical procedure to which the pregnant woman has consented, while inducing a miscarriage without her consent. Another type of behaviour by the perpetrator consists of leading the pregnant woman to terminate her pregnancy by violence, unlawful threat or deception. Such an offence is punishable by imprisonment of between six months and eight years. Where the perpetrator's act is directed against a conceived child who has attained the ability to live independently outside the pregnant woman's body, the perpetrator is liable to imprisonment of between one and ten years. If the consequence of termination of pregnancy in violation of the law or inducing or assisting such a procedure is the death of the pregnant woman, the penalty is more severe (Article 154 of the Penal Code) and ranges from one year to ten years. Where the death of the pregnant woman is a consequence of these actions, however, where the foetus has reached the capacity to live independently outside the pregnant woman's body, and where the termination of the pregnancy has been carried out by forcibly, the perpetrator is liable to imprisonment for a term of two to twelve years. The offender will be subject to a more severe punishment if, according to the provision of Article 9 § 3 of the Penal Code, the consequence in the form of the death of the pregnant woman was predicted or could have been predicted by the offender (Wiak, 2002, 252).

It is important to distinguish between acts of homicide of the basic type (Article 148 of the Penal Code), the privileged type (Article 149 of the Penal Code), and acts of termination of pregnancy (Articles 152–154 of the Penal Code). When the mother of the child is the perpetrator, the distinction will be between legally permissible termination of pregnancy and infanticide, or criminal homicide of the basic type. Given that Article 149 of the Penal

Code defining the offence of infanticide uses the phrase 'w okresie porodu' (in labour), the criterion setting the boundary will be the obstetric criterion. This means that the onset of labour constitutes the point after which the perpetrator's act will be qualified as the murder of a human being, not the termination of pregnancy (Jabłońska, 2013, 27–45).

Protection of the health and proper development of the conceived child in Polish law

In addition to protecting the life of the conceived child, the *Penal Code* regulations also include the protection of the child's health and proper development (Gałązka, Hałas et al, 2014, 31). This matter is addressed in Article 157a § 1 of the Penal Code, which criminalises causing bodily injury to the conceived child or a health disorder endangering its life. This offence is punishable by a fine, restriction of liberty or imprisonment of between one month and two years. The focus of protection here is the health and proper development of the conceived child, regardless of the environment in which it lives – including *in vitro*. The offence indicated is of a material nature, being committed at the moment when the effect is produced – bodily injury or health impairment of the unborn child (Zoll, 2017, 355). The offence is not committed by a medical practitioner when the bodily injury or health impairment of the conceived child is a consequence of treatment required to save the life or health of the conceived child or the pregnant woman (Art. 157a § 2 of the Penal Code; Budyn-Kulik, Kozłowska-Kalisz [et al.], 2019, 310). § 3 of Article 157a of the Penal Code includes a non-punishment clause for the mother of the conceived child.

Furthermore, the Constitutional Tribunal, in its ruling of 28 May 1997, recognised that the protection of the conceived child is also grounded in the *Convention on the Rights of the Child* adopted by Poland. In accordance with the provisions of the Convention, states (parties) recognise that the child has the right to the enjoyment of the highest attainable standard of health (Article 24(1)). They are also obliged to ensure appropriate pre-natal and post-natal health care for mothers (Article 24(2)(d)), which consequently constitutes a guarantee for the conceived child (Wąsek, Zawocki, 2010, 353).

The entry into force of the *Act of 6 January 2000 on the Ombudsman for Children* largely contributed to strengthening the position of the conceived child under Polish law. This Act introduced for the first time into the Polish legal system a normative definition of the term 'child' (Article 2(1)), where

a child is any human being from conception to adulthood (Jabłońska, 2018, 310–312).

Acting against the will of a pregnant woman would lead to criminal liability under Article 192 of the Penal Code for performing a medical procedure without the patient's consent. The doctrine states that the mother of a child prior to its birth cannot be considered its legal representative and therefore does not have the right to give or withhold her consent to medical procedures carried out on the conceived child. In such an event, either the medical practitioner or the mother should be obliged to ask the guardianship court to authorise the procedure to be carried out on the conceived child. Similarly, the doctor should apply to the guardianship court to obtain surrogate consent when the mother refuses to perform a vital medical procedure from the point of view of the life and health of the conceived child (Daniluk, 2008, 27).

Derivational interpretation offers the possibility to establish legal norms fairly unambiguously, which stems from the assumption of the normativity of legal texts. In view of this, it has been established that the term 'conceived child' under criminal law means a human being from the moment of fertilisation. Therefore, from this point onwards, criminal law protects human life, which does not mean that the law conclusively resolves doubts that exist in other scientific disciplines. It undoubtedly marks the beginning of the criminal law protection of human life in the prenatal phase (Rafałowicz, 2016, 62–66).

Protection of conceived life in canon law

Life is the greatest gift that man receives from God. The teachings of the Catholic Church unconditionally protect life from the moment of conception until natural death. The Church has always stood, and continues to stand, in favour of the unconditional protection of life, and does not recognise the premises that the state legislature allows (Głuchowski, 2015, 131).

Throughout the history of the Church, abortion has been considered a moral evil and at the same time a grave offence against God and God's law, thus being treated as a crime. Thus the offence needed to be properly sanctioned. The apostolic constitution *Effraenatam* of Pope Sixtus V of 29 October 1588 indicated that the crime of foetus removal should be punished as for the crime of murder. For both, the Pope instituted the penalty of excommunication *latae sententiae*. This punishment could only be imposed

by the Pope, which meant that no one else could grant absolution from it. On 31 May 1591, Pope Gregory XIV, in the apostolic constitution *Sedes Apostolica*, retained the penalty of excommunication, but recognised that it would already be reserved to bishops. This provision was also later upheld by Pope Pius IX. Later, the norm was placed in the Code of Benedict XV of 1917. It was then that the subject of the protection of life first found its way into ecclesiastical legislation (CIC/17).

The *Code of Canon Law* of 1917 stipulated in can. 2350 that anyone (including the mother) who removes a foetus is subject to *excommunication latae sententiae* reserved to the Ordinary as soon as the effect occurs. The Code also stipulated that the removal of a foetus consisted in carrying out procedures aimed at removing an immature foetus from the mother's womb, between conception and the sixth month of pregnancy. The removal of the foetus occurring after the sixth month of pregnancy was treated as an acceleration of the birth (Bączkowicz, 1958, 624). Active participation was required for the offence to have occurred, as there had to have been a criminal effect for the offence to have occurred, i.e. the removal of the foetus. The perpetrator, who by violence or persuasion caused the effect to occur, together with necessary helpers, without whose participation the miscarriage would not have occurred, were subject to censure (can. 2231, 2209 CIC/17). On the other hand, those who facilitated the removal of the foetus were not liable to punishment if this would have occurred anyway without their complicity. Severely culpable ignorance was excluded from the culpability of the offence unless there was *ignorantia crassa or affectata*, as well as a grave fear of imminent danger (Bączkowicz, 1958, 624).

When analysing ecclesiastical legislation with regard to the offence of *procuratio abortus*, one can notice, especially after 1591, an evolution towards a relaxation of the provisions criminalising this offence. Nevertheless, the act still remained one of the most grave offences against human life. This can be seen in the doctrine that has been invariably promulgated by the Magisterium of the Church, as well as in ecclesiastical legislation, which by its regulations has condemned every form of attack on the life of the unborn (Wenz, 2016, 142).

Among the canonical norms currently in force, the *1983 Code of Canon Law* (CIC/83) is the fundamental normative act of the Roman Catholic Church, which states in can. 1398:

A person who procures a completed abortion incurs a latae sententiae excommunication.

It is clear from the canon quoted above that the crime of abortion is the effective termination of pregnancy. Attempting an abortion is not in itself a criminal offence. Thus, in order to speak of an offence, it must be certain that the action taken resulted in the termination of the pregnancy (Calabrese, 1996, 360).

Canonical punishment under the *Code of Canon Law* is pastoral in nature, as its purpose is to safeguard the morality of the Church as a whole, as well as the well-being of the wrongdoer. It should therefore be used by those exercising executive authority only when it is a punishment necessary to defend the legal order in the Church (can. 1317 and 1341 CIC/83; Arias, 2011, 983). The penalty for the crime specified in can. 1398 CIC/83 is *latae sententiae* (automatic) excommunication (Arias, 2011, 1045). Against the crime of abortion, the legislator mentions the corrective punishment of excommunication (*excomunicatio*), which means exclusion. Hence, the penalty of excommunication under the CIC/83 consists in the exclusion of a Christian from the Christian community with all the consequences provided for in the CIC/83 (Arias, 2011, 1002).

An excommunication may be imposed by operation of the law (*latae sententiae*), to which the provisions of can. 1331 § 1 of the CIC/83 apply, as well as pronounced or declared (*ferendae sententiae*), to which the provisions of can. 1331 § 2 of the CIC/83 apply. The 1990 *Code of Canons of the Eastern Churches* (CCEC, 2002) provides a counterpart to the discussed canon from the CIC/83, which is the provision of can. 1450 § 2 of the CCEC. This provision imposes the penalty of major excommunication for causing an abortion and the application of other penalties to the clergyman, not excluding deposition, i.e. expulsion from the ordained ministry. The provisions of the CCEC present a distinction of excommunications into a minor excommunication and also a major excommunication. The penalty of major excommunication imposed under the norms of the CCEC does not differ in effect from the *latae sententiae* excommunication imposed by the CIC/83, since both prohibit the excommunicated person from receiving the sacraments (Arias, 2011, 916).

The penalty of excommunication falls on all those who procure the termination of a pregnancy. The mother of the child incurs the penalty of excommunication if she herself procures the termination of the pregnancy or uses someone else's interventions carried out on her. The penalty of excommunication is also imposed on the doctor who deliberately performs an abortion, and on all of his/her assistants who cause by their actions the effective termination of a pregnancy (Lempa, 1991, 251–269).

Abortion can be carried out either directly or indirectly. In the first case, where it consists in an intentional act using strictly defined means and methods, it is always a criminal offence and is not permitted (Peschke, 1985, 470). In the second case, however, it can take different forms and can be interpreted differently by the Church's criminal law. It is prohibited to act in such a way that abortion becomes a means of achieving a positive objective concerning the health of the mother. By contrast, an action that aims to save the health of the mother is permitted if the abortion does not become a means but merely a consequence of the treatment undertaken. In this situation, neither the doctor nor the mother incur the penalty of excommunication because their intention was not to perform an abortion. It is worth adding that a person who performs multiple abortions incurs excommunication as many times as they have performed this act (Leszczyński, 2001, 62–63).

The overriding consideration in the portrayal of abortion as a crime is the so-called *voluntassceleris*, i.e. the will to terminate the pregnancy (Di Mattia, 1988, 769). We already know that the manner in which an abortion is performed is irrelevant, what matters is *intentiocriminis*, which becomes the cause, the end and the means leading to the termination of pregnancy. Regardless of the manner in which the abortion is performed, *intentiocriminis* is that which leads to the intended effect (Di Mattia, 1988, 770).

The penalty of excommunication for the offence of abortion (can. 1355 § 2) can be removed by the ordinary of the place where the person under excommunication has a permanent or temporary residence or where they are currently residing. Speaking of sacramental scope, under common law, in addition to the ordinary of a given place, any bishop, canon penitentiary of a cathedral or collegiate church (can. 508 § 1), chaplains in hospitals, prisons, and chaplains travelling at sea (can. 556 § 2) can absolve from excommunication. Such authority under sacramental confession is also vested in confessors delegated to do so, in accordance with can. 137 § 1 of the CIC, by the ordinary. Furthermore, in addition to the situation in which confessors can absolve from excommunication, such authority is available to any confessor in extraordinary cases, i.e. in danger of death (can. 976), as well as in cases of emergency (can. 1357 § 1).

In addition to the punishment of excommunication, the ecclesiastical legislator also established criminal sanctions on the clergyman and the religious. A clergyman who has committed the offence of abortion as a perpetrator or co-perpetrator is incurring an irregularity. As can. 1044

§ 1 indicates, this is a permanent obstacle both to the reception of further ordination and to the exercise of already held ordination. A religious who is guilty of the offence should be expelled from the institute (can. 695 § 1). According to can. 1047 § 2, if a religious is a clergyman, he also incurs the aforementioned irregularities which are still binding upon him after his expulsion from the order. Only the Holy See dispenses from the irregularity of foetus removal (can. 1047 § 2).

When analysing whether a person has committed the offence of abortion, both the confessor and the auditor must be aware that the legislator does not always impose the punishment prescribed by the penal law for the offence committed, as can. 1323 shows. As is clear from can. 1324 § 3, any circumstances that could reduce the criminal culpability necessary to commit a criminal act exempt the offender from *latae sententiae* punishments.

In the *Code of Canon Law*, the legislator has also included the possibility of protecting conceived life by granting the mother the right of separation, i.e. to leave her husband in a situation where he would pose a grave mental or physical danger to the mother or to the mother's unborn child (can. 1153 § 1). On the basis of this canon, a pregnant wife who is forced by her husband to remove the foetus by persuasion, violence or unlawful threat or other means can leave him (Wenz, 2016, 152).

* * *

The penalisation of abortion in Poland raises many controversies. It is a subject of heated debate between abortion supporters and opponents. Differing views lead to new bills that either tighten regulations on the permissibility of abortion or liberalise these regulations. To the Catholic Church it is indisputable that human life begins at the moment of conception. Proponents of liberalising pro-life legislation very often forget the human dignity of every being and their innate, inalienable right to life. They also forget that respecting the sanctity of human life should be an overriding principle of medical practice, just as promoting the right to life is a fundamental duty of public authorities. No human being can decide that the life of another human being should end.

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